AMENDMENTS TO THE DRAWINGS:

The accompanying Replacement Sheet for Figure 2 has been amended to plainly indicate that step 22 tests for either the operating access by the front-seat passenger **or** the driver. No new matter has been added, and the Replacement Sheet is supported by the present application, including the specification. Entry and approval of amended Figure 2 is respectfully requested.

Attachments: One (1) Replacement Sheet.

REMARKS

Claim 17 is canceled without prejudice, claims 25 to 28 are added, and therefore claims 11 to 16 and 18 to 24 are currently pending and being considered in the present application.

In view of the following, it is respectfully submitted that all of the presently pending claims are allowable, and reconsideration is respectfully requested.

Applicant thanks the Examiner for acknowledging the claim for foreign priority and for indicating that all of the certified copies of the priority documents have been received.

With respect to page 2 of the Office Action, the Office Action objected to the disclosure because of minor informalities. In particular, it was asserted that the analyzer element had erroneously been associated with reference numbers 162 and 163 in Paragraph 32. The specification has been corrected to clarify that reference number 161 (Fig. 1) corresponds to the analyzer. Further, Fig. 2 now clarifies that at step 22 the detection arrangement can detect that *either* the vehicle driver or the front-seat passenger is accessing operator control. This is supported in both Paragraphs 40 and 43 of the Specification. It is therefore respectfully requested that the objections be withdrawn.

With respect to page 3 of the Office Action, claim 11 was rejected under the first paragraph of 35 U.S.C § 112 as to the enablement requirement.

As regards the enablement rejections of the claims, it is respectfully submitted that the Office Action's assertions and arguments presented do not reflect the standard for determining whether a patent application complies with the enablement requirement that the specification describe how to make and use the invention -- which is defined by the claims. *See* M.P.E.P. § 2164. The Supreme Court established the appropriate standard as to whether any experimentation for practicing the invention was undue or unreasonable. *See* M.P.E.P. § 2164.01 (citing *Mineral Separation v. Hyde*, 242 U.S. 261, 270 (1916); *In re Wands*, 858 F.2d. 731, 737, 8 U.S.P.Q.2d 1400, 1404 (Fed Cir. 1988)). Thus, it is axiomatic that the enablement test is "whether one reasonably skilled in the art could make or use the invention from the disclosures in the patent coupled with information known in the art without undue experimentation." *Id.* (citing *United States v. Teletronics, Inc.*, 857 F.2d 778, 785, 8 U.S.P.Q.2d 1217, 1223 (Fed. Cir. 1988)).

The Federal Circuit has made clear that there are many factors to be considered in determining whether a specification satisfies the enablement requirement, and that these factors include but are not limited to the following: the breadth of the claims; the nature of the invention; the state of the prior art; the level of ordinary skill; the level of predictability in the art; the amount of direction provided by the inventor; the existence of working examples; and the quantity of experimentation needed to make or use the invention based on the disclosure. *See id.* (citing *In re Wands*, 858 F.2d at 737, 8 U.S.P.Q.2d at 1404 and 1407). In this regard, the Federal Circuit has also stated that it is "improper to conclude that a disclosure is not enabling based on an analysis of only one of the above factors," and that the examiner's analysis must therefore "consider all the evidence related to each of these factors" so that any nonenablement conclusion "must be based on the evidence as a whole." *Id.*

Also, an examiner bears the initial burden of establishing why the "scope of protection provided by a claim is not adequately enabled by the disclosure." *Id.* (citing *In re Wright*, 999 F.2d 1557, 1562, 27 U.S.P.Q.2d 1510, 1513 (Fed. Cir. 1993)). Accordingly, a specification that teaches the manner and process of making and using an invention in terms that correspond in scope to those used in describing and defining the claimed subject matter complies with the enablement requirement. *See id.*

In contrast to the above, however, it is respectfully submitted that the Office Action's unsupported assertions simply do not concern — as they must under the law — whether the present application enables a person having ordinary skill in the art to practice the claimed subject matter of the claims without undue experimentation — which it plainly does, as would be understood by a person having ordinary skill in the art in view of the disclosure of the present application, including the specification. In short, the Office Action's assertions are merely conclusory and do not address the issue of whether one having ordinary skill would have to unduly experiment to practice the claimed subject matter of the rejected claims — *a proposition for which the Office bears the burden of proving a prima facie case as to the rejected claims.*

In this regard, to properly establish enablement or non-enablement, the Office must make use of proper evidence, sound scientific reasoning and the established law. In the case of *Ex parte Reese*, 40 U.S.P.Q.2d 1221 (Bd. Pat. App. & Int. 1996), a patent examiner rejected (under the first paragraph of section 112) application claims because they were based on an assertedly non-enabling disclosure, and was promptly reversed because the rejection was based only on the examiner's subjective belief that the specification was not enabling as

to the claims. In particular, the examiner's subjective belief was simply not supported by any "evidence or sound scientific reasoning" and therefore ignored recent case law — which makes plain that an examiner (and not an applicant) bears the burden of persuasion on an enablement rejection.

More particularly, the examiner in *Ex parte Reese* was reversed because the rejection had only been based on a conclusory statement that the specification did not contain a sufficiently explicit disclosure to enable a person to practice the claimed invention without exercising undue experimentation — which the Board found to be merely a conclusory statement that only reflected the subjective and unsupported beliefs of a particular examiner and that was not supported by any proper evidence, facts or scientific reasoning. *See id.* Moreover, the Board made clear that it is "incumbent upon the Patent Office . . . to back up assertions of its own with acceptable evidence," and also made clear that "[where an] examiner's 'Response to Argument' is not supported by evidence, facts or sound scientific reasoning, [then an] examiner has not established a *prima facie* case of lack of enablement under 35 U.S.C. § 112, first paragraph." *See id.* at 1222-23 (italics in original).

In the present case, the Office Action has not even asserted – let alone established -- in a conclusory way that undue experimentation would be required. Applicant fully believes that the present application plainly discloses how to use the subject matter of the rejected claims, as explained above, and that one skilled in the art should be able to adapt the system to non-front-seat passengers. In this regard, Paragraphs [0005], [0017], [0018], [0020], and [0030] specifically disclose the use of the controller unit by vehicle *occupants* which is not restricted to the driver and the front-seat passenger.

However, to facilitate matters, claim 11 has been rewritten to better clarify that the access detection device for determining which vehicle occupants is accessing the operator control applies to both a driver and a front-seat passenger.

It is therefore respectfully requested that the enablement rejections be withdrawn in view of the foregoing.

With respect to page 3 of the Office Action, claim 11 was objected to because of certain minor informalities. The term "control unit" has been changed to "controller unit", as suggested. Accordingly, withdrawal of the objection is requested.

Claim 11 to 13 were rejected under 35 U.S.C. 102(e) as being anticipated by U.S. Patent Application No. 2003/0220725 ("Harter" reference).

As to the anticipation rejections of the claims, to reject a claim under 35 U.S.C. § 102, the Office must demonstrate that each and every claim feature is identically described or contained in a single prior art reference. *See Scripps Clinic & Research Foundation v. Genentech, Inc.*, 18 U.S.P.Q.2d 1001, 1010 (Fed. Cir. 1991)). Further, not only must each of the claim features be identically described, an anticipatory reference must also enable a person having ordinary skill in the art to practice the claimed invention, namely the claimed subject matter of the claims, as discussed herein. *See Akzo, N.V. v. U.S.I.T.C.*, 1 U.S.P.Q.2d 1241, 1245 (Fed. Cir. 1986).

As further regards of the anticipation rejections, to the extent that the Office Action may be relying on the inherency doctrine, it is respectfully submitted that to rely on inherency, the Office must provide a "basis in fact and/or technical reasoning to reasonably support the determination that the allegedly inherent characteristics *necessarily* flows from the teachings of the applied art." M.P.E.P. § 2112; *See Ex parte Levy*, 17 U.S.P.Q.2d 1461, 1464 (Bd. Pat. App. & Int'l. 1990). Thus, the M.P.E.P. and the case law make clear that simply because a certain result or characteristic may occur in the prior art does not establish the inherency of that result or characteristic. Accordingly, it is respectfully submitted that any anticipation rejection premised on the inherency doctrine is not sustainable absent the foregoing conditions.

While the rejections may not be agreed with, to facilitate matters, claims 11 has been rewritten.

Claim 11, as presented, is to *a vehicle system for operation in a motor vehicle, comprising: an operator control for operating the vehicle system; a controller unit operatively connected to the operator control, wherein the controller unit influences operation of the vehicle system requested by the operator control; and an access detection device for determining which vehicle occupant is accessing the operator control, the vehicle occupants including at least one of a driver and a passive front-seat passenger; wherein the controller unit influences operation of the vehicle system requested by the operator control at least depending on which one of vehicle occupants is accessing the operator control; wherein the access detection device is of the group comprising of at least one of (a) a camera used with a software module for image detection, (b) at least one video sensor, (c) a radar sensor device, (d) at least one depth sensor, and (e) at least one first microphone to detect a spoken command from one of the vehicle occupants.*

It is respectfully submitted that the Harter reference simply does not *identically* disclose (or even suggest) the feature of *an access detection device for determining which one of vehicle occupants is accessing the operator control* as cited in claim 11. On page 5, the Office Action outlines its conclusory assertion as to how the process of detection occurs in Harter, in which proximity sensors 32 and 34 detect whether the passenger has broken the IR curtain, and if so, it is determined that the front-seat passenger is accessing the controller unit. If the proximity sensors detect that the passenger has not broken the IR curtain, the unit *deduces* that the driver is interacting with the controller unit. The Harter system does not *actually use* the same sensor system to determine if the driver accessed the controls, but rather simply *assumes* it was driver if it was not the front-seat passenger.

The presently claimed subject matter does not employ such a method, and thus can clearly be distinguished from the Harter reference.

Also, in the situation in which a *back-seat* passenger attempts to access the controls, the controls in Harter would be limited because the system would *falsely* be assuming that the driver was accessing the unit, because the front-seat passenger did not break the IR curtain, and thus the system *wrongly assumed* that it was the driver that was accessing the controls. In contrast, using the presently claimed subject matter, an *actual physical analysis of the driver* is performed to determine whether the driver is interacting with the control unit, so that the unit does not wrongly provide limited controls to a back-seat passenger accessing the unit.

Also, the Harter system would *wrongly assume* that the driver *was not* accessing the controls if the front-seat passenger and the driver were accessing the controls *simultaneously*. Because in such a scenario the proximity sensors would have determined that the passenger had broken the IR curtain and thus was *solely* accessing the unit, the driver would have access to all of the operation functionalities. Such a scenario would be a tremendous safety hazard and would defeat the purpose of the limiting function.

With the presently claimed subject matter, however, because an actual physical analysis of the driver is made as well, a determination that the driver is using the controls can still be made and thus operation functionality can still be limited, when the driver and the front-seat passenger use the controls simultaneously.

Furthermore, claim 11 now specifically provides that the access detection device could be one of a camera used with a software module for image detection, at least one video sensor, a radar sensor device, at least one depth sensor, or at least one first microphone to detect a spoken command from one of the vehicle occupants. The Harter reference does not disclose or suggest a radar sensor. Also, the Harter, Breed (U.S. Patent Application No. 2005/0131607 ("Breed" reference)), and Krumm (U.S. Patent No. 5,983,147 ("Krumm" reference)) references, whether taken alone or combined, do not identically disclose (or suggest) using a *plurality of microphones to determine the origin of a voice command* to determine whether a passenger or driver accessed the controls. For example, the Breed reference discusses the usage of a microphone *simply to communicate with an outside facility in the event of an accident*, but it does not identically disclose (or even mention) using microphones to determining passenger location, let alone determine whether a driver or passenger accessed the controller unit, as provided for in the context of the presently claimed subject matter.

For the foregoing reasons, claim 11, as presented, is allowable, as are its dependent claims 12 and 13.

Claims 14 to 16 and 21 were rejected under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent Application No. 2003/0220725 ("Harter" reference) in view of U.S. Patent No. 5,983,147 ("Krumm" reference).

To reject a claim under 35 U.S.C. § 103(a), the Office bears the initial burden of presenting a *prima facie* case of obviousness. *In re Rijckaert*, 9 F.3d 1531, 1532, 28 U.S.P.Q.2d 1955, 1956 (Fed. Cir. 1993). To establish *prima facie* obviousness, three criteria must be satisfied. First, there must be some suggestion or motivation to modify or combine reference teachings. *In re Fine*, 837 F.2d 1071, 5 U.S.P.Q.2d 1596 (Fed. Cir. 1988). This teaching or suggestion to make the claimed combination must be found in the prior art and not based on the application disclosure. *In re Vaeck*, 947 F.2d 488, 20 U.S.P.Q.2d 1438 (Fed. Cir. 1991).

Also, as clearly indicated by the Supreme Court in *KSR*, it is "important to identify a reason that would have prompted a person of ordinary skill in the relevant field to combine the [prior art] elements" in the manner claimed. *See KSR Int'l Co. v. Teleflex, Inc.*, 127 S. Ct. 1727 (2007). In this regard, the Supreme Court further noted that "rejections on obviousness cannot be sustained by mere conclusory statements; instead, there must be some articulated reasoning with some rational underpinning to support the legal conclusion of

obviousness." *Id.*, at 1396. Second, there must be a reasonable expectation of success. *In re Merck & Co., Inc.*, 800 F.2d 1091, 231 U.S.P.Q. 375 (Fed. Cir. 1986). Third, the prior art reference(s) must teach or suggest all of the claim features. *In re Royka*, 490 F.2d 981, 180 U.S.P.Q. 580 (C.C.P.A. 1974).

The secondary Krumm reference only refers to a system for determining when it is not safe to arm a vehicle airbag by storing representations of known situations as observed by a camera at a passenger seat; and comparing a representation of a camera output of the current situation to the stored representations to determine the known situation most closely represented by the current situation.

Accordingly, claims 14 to 16 and 21 depend from claim 11, as presented, and are therefore also allowable for essentially the same reason as claim 11, as presented, since the Krumm reference does not cure -- and is not asserted to cure -- the critical deficiencies of the Harter reference.

Claims 17 to 20 were rejected under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent Application No. 2003/0220725 ("Harter" reference) in view of U.S. Patent Application No. 2005/0131607 ("Breed" reference).

Claims 17 to 20 depend from claim 11, as presented, and are therefore also allowable for essentially the same reason as claim 11, as presented, since the Breed reference does not cure -- and is not asserted to cure -- the critical deficiencies of the Harter reference.

Claims 22 to 24 were rejected under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent Application No. 2003/0220725 ("Harter" reference in view of U.S. Patent No. 5,983,147 ("Krumm" reference) in further view of "Applicant's acknowledged well known art".

Claims 22 to 24 depend from claim 11, as presented, and are therefore also allowable for essentially the same reason as claim 11, as presented, since what the Examiner has construed as "Applicant's acknowledged well known art" does not cure -- and is not asserted to cure -- the critical deficiencies of the Harter and Krumm references.

As further regards all of the obviousness rejections, any Official Notice is respectfully traversed to the extent that it is maintained and it is requested that the Examiner provide specific evidence to establish those assertions and/or contentions that may be supported by the Official Notices under 37 C.F.R. § 1.104(d)(2) or otherwise. In particular, it

is respectfully requested that the Examiner provide an affidavit and/or that the Examiner provide published information concerning these assertions. This is because the § 103 rejections are apparently being based on assertions that draw on facts within the personal knowledge of the Examiner, since no support was provided for these otherwise conclusory and unsupported assertions. (See also MPEP § 2144.03).

New claims 25 to 28 do not add new matter and are supported by the present application including the specification. Claims 25 to 28 depend from claim 11, as presented, and are therefore allowable at least for the same reasons as claim 11. Additionally, the added claims include further features also not disclosed by the references as applied.

Accordingly, claims 11 to 16 and 18 to 28 are allowable.

CONCLUSION

In view of the above, it is respectfully submitted that all of presently pending claims 11 to 16 and 18 to 28 are allowable. It is therefore respectfully requested that the rejections (and any objections) be withdrawn. Since all issues raised by the Examiner have been addressed, an early and favorable action on the merits is respectfully requested.

Respectfully submitted,

Date: 7/29/2009

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